IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Criminal Contempt Petition No.1 of 2006

Thrity Sam Shroff. .. .. Petitioner
(Org.Deft.No.8-a)
v/s.

Mehroo Meherji Vakil & ors. .. Respondents

Mr.Rustom Bhagalia i/by Mr.Vijay Jagtap for petitioner.

Mr.H.J.Thakkar, Senior Advocate with Mr.V.H.Thakkar with Mrs.Meharji i/by Gagrats for respondent Nos.1 to 3.

Mr.Robin Jaisinghani for respondent No.4.

W I T H

Writ Petition No.1694 of 2006

Thrity Sam Shroff. .. .. Petitioner

V/s.

The State of Maharashtra &
ors. .. .. Respondents

Mr.Rustom Bhagalia for petitioner.

Mr.H.J.Thakkar, Senior Advocate with Mr.V.H.Thakkar with Mrs.Meharji i/by Gagrats for respondent Nos.3 to 5.

Mr.Robin Jaisinghani for respondent No.6.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 4th October 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. The petitioner in both these Petitions was defendant No.8-a in Suit No.339 of 1991 which was filed by respondent Nos.1, 2 and 3 to Criminal Contempt Petition No.1 of 2006 and who are the respondent Nos.3 to 5 in Writ Petition No.1694 of 2006. That Suit was for eviction of the petitioner as well as respondent No.4 to Criminal Contempt Petition No.1 of 2006 (and who is respondent No.6 in Writ Petition No.1694 of 2006). That Suit has been subsequently decreed on 5th of May 2006. The petitioner herein has filed an Appeal bearing No.457 of 2006 which has been since admitted.

3. It so transpired that during the course of the Suit the original plaintiffs wanted certain developments subsequent to the filing of the Suit to be brought on record. They took out a Chamber Summons for that purpose. It is not disputed that the Chamber Summons was served on the mother of the petitioner who was the original defendant No.8 on 12th April 1999. The petitioner is claiming her rights through the original defendant No.8 (who has since passed away) and she has been subsequently joined as defendant No.8-a.

4. The Chamber Summons reached before a

Single Judge on 2nd December 1999. The learned Judge noted that the Chamber Summons had been served on the defendants. However, some of them were not present before the Court. Having noted that the Chamber Summons sought placing subsequent events on record, the learned Judge allowed it by an order passed on 2nd December 1999. While passing this order, however, he permitted the defendants, who were not present, to apply to recall this order, if they so desire.

5. It is not in dispute that the amended Plaint was served on defendant No.8 on 28th of March 2000 and that the additional Written Statement is filed by her on 10th April 2000. It is the case of the present petitioner (defendant No.8-a) that she came to know about this order being passed much later on 18th March 2006. It is her contention that not informing her about this order amounts to a criminal contempt. It is submitted that the petitioner sought to get certain documents which were relied upon by the original plaintiffs, but the same were not made available. The gravamen of this contempt petition is basically that the copy of the order was not furnished to the petitioner nor the documents subsequently. This Criminal Contempt Petition

No.1 of 2006 is filed on 4th April 2006. The petitioner, however, applied to the learned Advocate General by way of abundant caution to seek his permission and that permission has been subsequently declined by the letter dated 2nd May 2006 of the learned Advocate General. The Advocate General noted in para-2 of his letter that the grievance of the petitioner is that she was not served with a complete copy of the Chamber Summons and that the Chamber Summons was subsequently granted on 2nd December 1999. The copy of this order dated 2nd December 1999 was served on her only on 18th March 2006. The learned Advocate General thereafter recorded in para-3 that the order of the learned Single Judge gives her liberty to apply to recall the order. In para-4 of his letter, the learned Advocate General noted that she had the notice of the amendment and it was for her to inquire and ascertain under what order those amendments were granted. He, therefore, rejected the application of the petitioner. That rejection has led to the second Writ Petition bearing No.1694 of 2006.

6. Mr.Bhagalia, learned Counsel appearing for the petitioner, submitted that this Court ought to exercise its jurisdiction under Article 215 of the

Constitution of India read with the definition of criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971. Now, as far as Article 215 is concerned, it notes that the High Court is a Court of record and will have all the powers of such a Court, including the power to punish for contempt of itself. Section 2(c) of the Contempt of Courts Act speaks about a publication or doing of any act which leads to any of the three consequences mentioned therein. Section 2(c) reads as follows:-

> " 2(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-
>
> (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. "

Mr.Bhagalia submits that by not making available the copy of the order and the documents sought, the due course of judicial proceeding is affected and, therefore, this Court ought to take cognizance and hold the respondents guilty of contempt. In this behalf, he relied upon two judgments firstly in the case of **Shri Baradakanta Mishra vs. Registrar of Orissa High Court & anr. reported in AIR 1974 SC 710** and secondly in **Zahira H. Sheikh (5) & anr. vs. State of Gujarat & ors.** reported in **(2006) 3 SCC 374**. As far as the first judgment is concerned, he has drawn our attention to paras 35 to 37 thereof wherein the Court has laid down as to which publication amounts to bringing the Court to ridicule and affect the administration of justice. In para-36 the Court has noted that clause (iii) of Section 2(c) is a residuary provision. Ultimately in para-37 the Court has observed that all the three sub-clauses define contempt in terms of obstruction of or interference with the administration of justice. As far as the second

judgment is concerned, Mr.Bhagalia has drawn our attention to paragraphs 19, 21, 24 and 30 of the judgment to submit that any act which amounts to deflect the course of justice by unacceptable methods would amount to contempt.

7. We have noted the submissions of Mr.Bhagalia. Both the cases cited by Mr.Bhagalia and the law laid down therein cannot apply to the present case. The first case was of a Judicial Officer who went on making allegations against the courts from time to time and even as observed in para-37 thereof the conduct must amount to obstruction of or interference with the administration of justice, which was so held in that matter. In Zahira's case (supra), she went on changing her stand from time to time and, therefore, the Court held that this was an attempt to deflect the course of justice by unacceptable methods. In the present case, all that has happened is that the original plaintiffs took out a Chamber Summons. That was served on the original defendant No.8. Thereafter it was heard and allowed by the learned Single Judge. While allowing it, by abundant caution, he observed that the defendants are not present. They may apply to recall the order, if they so desire. Thereafter

the amended Plaint has been served on the defendant and it has been replied by filing the additional Written Statement. It was the responsibility of the original defendant No.8 and of her Advocate to inquire as to what was the order passed. That inquiry is not made and the original Plaintiffs are sought to be faulted as if it was their responsibility to serve a copy of the order on the original defendant No.8. Any such expectation only from the plaintiffs, without taking appropriate steps by defendant No.8 or the Advocate of defendant No.8, cannot lead to defendant No.8 to make the allegation of criminal contempt on the part of the original plaintiffs or their Advocate. Similarly if the original defendant No.8 or the present petitioner wanted some documents and they were not furnished, it was open to the party concerned to apply to the Court to get copies thereof. It surely cannot amount to any obstruction of or interference with the course of justice to require this Court to interfere either under Article 215 of the Constitution or Section 2(c) of the Contempt of Courts Act.

8. The petitioner has filed her Appeal against the decree. If she has any grievance with respect to the amendments which were granted and

on which the original defendant No.8 filed the additional Written Statement, it will be open to her to raise grounds in the Appeal and we are told that she has already raised those grounds in Appeal. They will be looked into as and when the Appeal is heard and decided.

9. In the circumstances aforesaid, both the Criminal Contempt Petition and the Writ Petition are dismissed.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)